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FADEI USA, INC., PAN AMERICAN
8 ENGINEERING and EQUIPMENT CO., INC.
MANUEL SILVA, and MARIANI PACKING CO.,
9 INC.

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 VISTAN CORPORATION,

14 Plaintiff,

15 v.

16 FADEI USA, INC., PAN AMERICAN
17 ENGINEERING and EQUIPMENT CO.,
INC. MANUEL SILVA, and MARIANI
18 PACKING CO., INC.,

19 Defendants.
20

21 AND RELATED CROSS-ACTION.
22

Case No. C 10-4862 JCS

**DECLARATION OF BEN RUTTER IN
SUPPORT OF DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, PARTIAL SUMMARY
JUDGMENT**

Date: September 14, 2012
Time: 9:30 a.m.
Dept: Courtroom G, 15th Floor
Judge: Hon. Joseph C. Spero

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1 I, Ben Rutter, declare as follows:

2 1. I am the Industrial Technology Manufacturing Supervisor for Defendant Mariani
3 Packing Co., Inc. ("Mariani") and am employed at its fruit processing facility in Vacaville,
4 California. I submit this Declaration in support of Defendants' Motion for Summary Judgment
5 or, in the alternative, Partial Summary Judgment (the "Motion"). I make this declaration of my
6 own personal knowledge, and, if called as a witness, I could and would competently testify
7 thereto.

8 2. I have a B.S. in Industrial Engineering from California Polytechnic State
9 University, San Luis Obispo, California. Since receiving my degree in industrial engineering, I
10 have been employed full time at Mariani as an industrial engineer focusing primarily on fruit
11 processing, including prune pitting operations.

12 3. Mariani is in possession of ten Fadei M-292 production prune pitters at its facility
13 in Vacaville, California. I am informed and understand that these machines are the Accused
14 Pitters, as that term is defined in the Motion. I have been present during certain inspections of
15 these Accused Pitters by attorneys for the Plaintiff, as well as by experts for the Defendants.

16 4. My responsibilities as Industrial Technology Manufacturing Supervisor for
17 Mariani included and include on an ongoing basis, among other things, ongoing evaluation, parts
18 procurement, and assessment of performance issues for the Accused Pitters. In light of my
19 educational background, my job responsibilities, and given my near daily work with and around
20 the Accused Pitters, I am intimately familiar with the form and function of the machine elements
21 and operation of the Accused Pitters.

22 5. I have also read and am familiar with the contents of the Declaration of Dr.
23 Richard Klopp in Support of Defendants' Motion for Summary Judgment (hereinafter the "Klopp
24 Declaration"). Dr. Klopp accurately describes the form and function of the Accused Pitters, and
25 the exhibits attached to his declaration are representative of the form and function of each of the
26 Accused Pitters.

27 6. As correctly stated in the Klopp Declaration, none of the machine components on
28 the Accused Pitters, connected to the closing bars that open the pockets of the fruit holders, move

1 in a straight line. Instead, they all move in a rotational or angular path and are driven by a
2 rotating crank attached to the output of a rotating motor. Dr. Klopp refers to these components as
3 the Crank-Rocker Mechanism and the Four-Bar Linkage.

4 7. I have reviewed and am familiar with the Plaintiff's Amended Infringement
5 Contentions. Therein, in its infringement claim chart, Plaintiff asserts that an "active assembly"
6 as that term is used in Claims 5 and 12 is present in the Accused Pitters, and alleges that this
7 "active assembly" may be seen in documents DEF00026 and DEF00038. I have reviewed these
8 documents, and I recognize them to be from the Fadei M-292 Users Guide, and except for some
9 minor differences between DEF00026 but not DEF00038, they are drawings that are
10 representative of the Accused Pitters noted above and addressed in Dr. Klopp's declaration and
11 the exhibits attached to his declaration. I recognize Exhibits 6, 7 and 8 of Dr. Klopp's declaration
12 as labeled versions of the drawing shown in DEF00038 referenced in Plaintiff's Amended
13 Infringement Contentions.

14 I declare under penalty of perjury pursuant to the laws of the State of California and the
15 United States that the foregoing is true and correct and that this Declaration was executed on
16 August 10, 2012, at Vacaville, California.

17 
18 BEN RUTTER